APPENDIX A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 640-65

Complaint

Plaintiffs for their Complaint against the Defendants herein allege as follows:

I.

Plaintiffs are citizens of the Commonwealth of Pennsylvania; Defendant Interhandel is a foreign corporation organized under the laws of Switzerland; Defendants Nicholas Katzenbach and Douglas Dillon are officials of the United States Government and are citizens of the State of New Jersey.

The amount of the controversy exclusive of interest and costs exceeds $25,000.

II.

The Plaintiffs are Citizens of the United States who suffered loss and damage at the hands of the Nazi Conspiracy and who were not Citizens of the United States at the time they suffered such loss and damage, and Plaintiffs bring this Action on behalf of themselves and on behalf of each and all other persons who are similarly situated in that they are Citizens of the United States who suffered loss and damage at the hands of the Nazi Conspiracy and who were not Citizens of the United States when they suffered such loss and damage; such persons are so numerous as to make it impracticable to bring them all before this Court and the object of the Action is the adjudication of claims which do or may affect specific property involved in the Action, and there is a common question of law and fact affecting the several rights and a common relief is sought.

III.

The Defendants Nicholas Katzenbach, Attorney General of the United States as successor to the Alien Property Custodian, and Douglas Dillon, Secretary of the Treasury of the United States, have in their possession property in the amount of $123,000,000 which they state they hold for the Defendant Interhandel, said property being a portion of the proceeds of the sale of the stock of General Aniline Corporation which portion under the terms of the settlement of certain litigation, the Defendant Nicholas Katzenbach has stated he intends to pay to Defendant Interhandel.

IV.

The Plaintiffs herein were not parties to the litigation which has been settled by and between the Defendants herein, were not represented in such litigation, and have not released or settled their claims herein, and have not authorized anyone to release or settle their claims herein.

V.

The Defendant Douglas Dillon, Secretary of the Treasury of the United States of America, will receive said sum of $123,000,000 from the selling syndicate of Blythe and Company and First Boston and intends to pay said funds to the Defendant Interhandel.

VI.

Between January 30, 1933 and May 1, 1945 a number of men and of corporations in Europe, and particularly in Germany, acted in a gigantic conspiracy in the course of which they seized control of the territory of much of Europe, they illegally and wrongfully seized and appropriated the property and money and assets of the Plaintiffs herein, individually and of the class which they represent. They enforced the slave labor without compensation of the Plaintiffs herein and of the class which they represent. They killed illegally the members of the fam-

ilies of the Plaintiffs herein and of many of the class which they represent, from which deceased members of the families the Plaintiffs herein would have received economic support and would have been entitled to receive economic support. This gigantic conspiracy shall be hereinafter referred to in this pleading as the "Nazi Conspiracy".

VII.

I. G. Farbenindustrie, A.G., a corporation organized in Germany, of immense proportions, was an integral part of the Nazi Conspiracy, profited from the Nazi Conspiracy, participated in the Nazi Conspiracy, was enriched by the Nazi Conspiracy, and by the slave labor of the Plaintiffs, in the illegal seizure of properties and assets of the Plaintiffs herein. I. G. Farbenindustrie, A.G. has been adjudicated to have been an integral part of the Nazi Conspiracy in the Nuremberg Trials, and the Government of the United States has concluded officially that I. G. Farbenindustrie, A.G. was an integral part of the Nazi Conspiracy.

VIII.

The Defendant Interhandel herein was a creature of I. G. Farbenindustrie, A.G. The Defendant Interhandel was organized by I. G. Farbenindustrie A.G. and by its officers and principals as a Swiss holding corporation. The Defendant Interhandel has never legally established any other status than that of its organization as a creature of I. G. Farbenindustrie A.G. and as a matter of law and equity it must be presumed that its status is unchanged and that its status is unchanged for the purposes of this Action.

IX.

Defendant Societe Internationale pour des Participations Industrielles et Commerciales, S.A., a corporation organized under the laws of Switzerland, also known as

Interhandel A.G., and formerly known as I. G. Chemie, A.G., herein referred to as "Interhandel", is and should be fully accountable and liable to the extent of the assets and properties within the jurisdiction of this Court in the United States as herein set forth, and to the extent of the losses and damages of the Plaintiffs herein at the hands of the Nazi Conspiracy.

X.

Under the valid laws of the states in which the properties and assets of the Plaintiffs herein individually and as a class were seized and appropriated by the Nazi Conspiracy, this seizure and appropriation was wrongful and illegal and a cause of action and claim by the Plaintiffs herein exists by reason thereof. Under the valid laws in the states in which the Plaintiffs herein individually and as a class were forced to work as slave labor without compensation by the Nazi Conspiracy, this forced labor was illegal and gave rise to a valid claim for compensation on the part of the Plaintiffs. Under the valid laws in effect in the states in which it occurred, the killing of the members of the families of the Plaintiffs herein on whom the Plaintiffs herein could have relied for economic support was a wrongful and illegal act and gave rise to a cause of action for wrongful death and for compensation for loss of economic support.

In each instance the respective valid laws in the states concerned were in effect notwithstanding in some instances efforts by the Nazi Conspiracy to suspend or change these laws by decrees which were in themselves invalid and void.

XI.

The claims of the Plaintiffs herein rest further upon the inherent natural law which applies to the human rights and property rights of all human beings and which were violated by the Nazi Conspiracy.

XII.

The Government of the United States has officially declared and determined that the Defendant Interhandel is and was at all relevant times herein a creature of I. G. Farbenindustrie, A.G., and no determination to the contrary has been made by any Court.

XIII.

The class which Plaintiffs represent exceeds two hundred thousand persons and the loss and damage suffered by the Plaintiffs individually and as a class at the hands of the Nazi Conspiracy exceeds $123,000,000.

XIV.

The Plaintiffs individually and as a class in law and in equity have the right to the funds of $123,000,000 referred to in Paragraph III herein. Said assets are in the District of Columbia, and the Defendants Nicholas Katzenbach and Douglas Dillon are residents of the District of Columbia.

XV.

This Court has the jurisdiction to order said funds held by the Defendants Douglas Dillon, Secretary of the Treasury of the United States and Nicholas Katzenbach, Attorney General successor to the Alien Property Custodian; and this Court has the jurisdiction to appoint a master or masters to receive proof of claim and of loss under specified conditions and within specified limits of time, from the Plaintiffs individually within the class herein, and to direct the payment of said funds pro rata equitably to the Plaintiffs upon such proof of claim duly adjudicated, and the Plaintiffs plead that this be done.

XVI.

The loss and damage at the hands of the Nazi Conspiracy suffered by Plaintiff Wally Kelberine individually

includes the seizure and appropriation of a millinery store and a factory, the killing of her husband, incarceration in concentration camps at Dachau and Buchenwald, and the seizure and appropriation of moneys and other properties.

XVII.

The loss and damage at the hands of the Nazi Conspiracy suffered by Plaintiff Lenka Berlin includes the seizure and appropriation of properties, the enforced slave labor, the killing of her brothers, and other injuries and loss.

XVIII.

Each of the numerous members of the class which Plaintiffs represent have suffered similar loss and damage.

XIX.

Plaintiffs have no adequate remedy other than through the jurisdiction of this Court.

WHEREFORE, Plaintiffs pray judgment of this Court:

1. That the Defendants Douglas Dillon, Secretary of the Treasury of the United States of America, and Nicholas Katzenbach, Attorney General of the United States of America successor to the Alien Property Custodian, be permanently enjoined from paying the sum of $123,000,000 or any part thereof, received from the sale of the stock of General Aniline Corporation to the Defendant Interhandel and be directed to hold the said funds of $123,000,000 which are the portion of the proceeds of the sale of the stock of General Aniline, responsive to the further orders of this Court.

2. That the Plaintiffs as a class be adjudicated as having the right to said $123,000,000 in funds and to judgment to the extent of said funds against the Defendant Interhandel.

3. That upon the individual proof of claim by the Plaintiffs to a master or masters appointed by this Court, the Plaintiffs individually pro rata and equitably be paid said funds upon their adjudicated claims.

4. And for such other and further relief as this Court may deem just and equitable.

JOHN A. CROGHAN, ESQ.

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COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF PHILADELPHIA } ss.:

WALLY KELBERINE, being first duly sworn, deposes and says that she is one of the plaintiffs in the above-entitled action, that the allegations in the foregoing Complaint are true and as to those matters therein stated on information and belief she believes them to be true.

WALLY KELBERINE

Sworn to and Subscribed Before me this 16th Day of March, 1965.

s/ CORRINE L. BRESCIA
Notary Public

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19286

WALLY KELBERINE, ET AL., *Appellants*

v.

SOCIETE INTERNATIONALE, ETC., INTERHANDEL, ETC., ET AL., *Appellees*

Appeal from the United States District Court
for the District of Columbia

Decided April 7, 1966

Mr. Harold E. Stassen, of the bar of the Supreme Court of Pennsylvania, *pro hac vice,* by special leave of court, with whom *Mr. John Alvin Croghan* was on the brief, for appellants.

Mr. John J. Wilson, with whom *Mr. Frank H. Strickler* was on the brief, for appellee Societe Internationale, Etc.

Mr. Richard S. Salzman, Attorney, Department of Justice, with whom *Mr. David C. Acheson,* United States Attorney at the time the brief was filed, and *Mr. Morton Hollander,* Attorney, Department of Justice, were on the brief, for appellees Katzenbach and Fowler, *Mr. Fred W. Drogula,* Attorney, Department of Justice, also entered an appearance for appellees Katzenbach and Fowler.

Before PRETTYMAN and WILBUR K. MILLER, *Senior Circuit Judges,* and DANAHER, *Circuit Judge.*

PRETTYMAN, *Senior Circuit Judge:* This law suit has an antecedent history. In years prior to World War II the appellee Societe Internationale, Etc.,[1] a Swiss holding

[1] Known to this litigation variously as I. G. Chemie and as Interhandel.

corporation, came into ownership of various American properties, including over 90 per cent of the stock of General Aniline and Film Corporation, a Delaware corporation. In 1942 this stock was vested in the Alien Property Custodian, succeeded by the Attorney General of the United States, under the Trading with the Enemy Act.[2] When the war was over, Interhandel in 1948 sued under Section 9(a) of the Act to recover the property. The litigation was extensive.[3] Finally, in 1963 the case was settled by an agreement written and filed in the suit.[4] Pursuant to that stipulation the General Aniline stock was sold at public auction, some three hundred twenty-nine million dollars being realized from the sale. The bids were opened March 9, 1965, and the shares delivered March 17, 1965. Interhandel's share of the proceeds was one hundred twenty million dollars. This share was deposited in a special account in the Treasury and is being held there, delivery to Interhandel having been delayed by the terms of the settlement and by this law suit.

Our appellants, Wally Kelberine and Lenka Berlin, two individuals, filed this civil action on March 16, 1965, the day before the delivery of the Aniline stock pursuant to the sale at auction. In their complaint they say they suffered under the Nazi conspiracy in Europe and that they are now, although they were not at the time of their loss and damage, citizens of the United States. They say they bring the action on behalf of all persons similarly situated, too numerous to bring before the court. They

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[2] 40 STAT. 411 (1917), as amended, 50 U.S.C. App. § 1, *et seq.*

[3] See Societe Internationale v. Rogers, 357 U.S. 197 (1958), *reversing* Societe Internationale, Etc. v. Brownell, 100 U.S. App. D.C. 148, 243 F. 2d 254 (1957); Societe Internationale, Etc. v. McGranery, 111 F. Supp. 435 (D.D.C. 1953), *aff'd sub nom.* Societe Internationale, Etc. v. Brownell, 96 U.S. App. D.C. 232, 225 F. 2d 532 (1955), *cert. denied*, 350 U.S. 937 (1956).

[4] Civil No. 4360 (D.D.C. 1948).

say the Attorney General and the Secretary of the Treasury intend to deliver to Interhandel the $120,000,000 proceeds from the sale. They further say that between 1933 and 1945 a number of men and corporations in Europe acted in a gigantic conspiracy (referred to as the "Nazi Conspiracy") in the course of which they illegally seized the property of plaintiffs and of the class they represent, and that they (meaning the conspirators) enforced slave labor upon plaintiffs and killed members of the families of plaintiffs. They further alleged that I. G. Farbenindustrie, a corporation, was an integral part of the Nazi conspiracy, participated in it, and profited from it, and has been declared officially by the United States Government to have been an integral part of that conspiracy. They say that Interhandel was a creature of Farbenindustrie and that it is and should be fully accountable and liable to the extent of the assets within the United States and to the extent of the losses and damages of the plaintiffs at the hands of the Nazi conspiracy. Plaintiffs say that the seizures, etc., were illegal under the valid laws of the states concerned and that the claims of plaintiffs rest further upon inherent natural law. They say the class they represent exceeds two hundred thousand persons.

Plaintiffs pray that the Attorney General and the Secretary be enjoined from paying to Interhandel any part of the $120,000,000, that plaintiffs as a class be adjudicated as having "the right to said $123,000,000 in funds", and "That upon the individual proof of claim by the Plaintiffs to a master or masters appointed by this Court, the Plaintiffs individually pro rata and equitably be paid said funds upon their adjudicated claims."

The Government defendants moved to dismiss on the grounds that, as to them, the court lacked jurisdiction and that the complaint failed to state a claim upon which relief could be granted. Defendant Interhandel moved to dismiss "and/or" to quash the summons on the grounds

that it was not subject to process in the District and that it had not been properly served. Plaintiffs proceeded to take depositions in pursuit of discovery. The motions were set for hearing April 9, 1965. Plaintiffs moved to continue them generally. The court granted the Government defendants' motion to dismiss and continued Interhandel's motion, setting it for hearing on April 29th. Plaintiffs took further depositions and moved to continue the hearing on the motion to a still later date to permit them to explore further certain phases of discovery. The court denied the motion to continue and granted Interhandel's motion to dismiss and to quash service of process. This appeal followed.

I

Did the District Court err in refusing to continue consideration of the motions to dismiss pending the further taking of depositions by plaintiffs? The subject of the depositions, so far as is indicated, was the doing of business by Interhandel in the District of Columbia. Plaintiffs had one continuance of twenty days and had taken several depositions directed to this subject. Interhandel claimed the subject had been covered exhaustively. The court sought a proffer from counsel for plaintiffs, pointing out that plaintiffs said the only business of Interhandel was fronting for Farben and owning the stock of General Aniline. Upon that basis the court thought the evidence already taken was enough. Plaintiffs said that by taking the further depositions they would have "a more comprehensive and complete view". We think the court was correct, and in any event the matter was primarily in its discretion.

II

Did the court err when it quashed the service? We think it did. The District of Columbia statute[5] provides that

[5] D.C. Code § 11-306 (1961 ed.).

the District Court here shall have cognizance "of all cases in law and equity between parties, both or either of which shall be resident or be found within said district". Interhandel came into the District to file a civil action concerning its property. It continued to prosecute that action. It appointed and maintained here an attorney in fact, who was authorized to accept service of all notices and process on its behalf for such proceedings between it and the Attorney General and "Treasurer of the United States" as may be necessary to the enforcement of the stipulation of settlement of the pending civil action and of any judgment entered in that action; and for no other purpose whatever. We think the institution and prosecution of a civil action in the court here clearly establishes the presence of the corporation here. It voluntarily subjected itself to the jurisdiction of the court; it could not do so *in absentia*. So we think Interhandel was clearly found here.[6]

Interhandel says appellants' contentions on this point fail because it has never transacted business here. It says Congress defined "doing business" when it exempted from license requirements corporations which merely prosecute litigation.[7] The statute does not read as Interhandel reads it. It exempts these corporations from the necessity of getting a license, but it notably does not say they are not doing business. Furthermore the liability of a foreign corporation to suit here does not depend upon its doing business here; it depends upon its being found here.

The corporation being found here and therefore subject to suit here, the next question concerns service of process: Upon whom could service be had? We think service upon

[6] The "found" feature of this statute was discussed briefly by the Supreme Court in Graham v. Brotherhood of Firemen, 338 U.S. 232, 236 (1949).

[7] D.C. Code § 29-933(b) (1961 ed.)

the agent resident in the District was valid. His expressed authority was limited, to be sure. But it covered the law suit respecting the Interhandel property; he was empowered to accept service "for such proceedings between the parties to this Stipulation as may be necessary to the interpretation or enforcement, or both, of this Stipulation". The case at bar certainly involved the enforcement of the stipulation; indeed it sought to prevent that enforcement. It is true that proceeding was not between the parties to the stipulation, but all of those parties were parties to this suit. It could quite properly be held that process in this case fell within the agent's express authority. But we do not rest upon that power of attorney. We think that under the total circumstances of the case the agent of the corporation present in the District for the purpose of conducting the litigation in the courts here was subject to process in this suit. The statute says [8] that service may be made on a non-resident corporation by service thereof on "the registered agent", but it also provides [9] that nothing therein shall limit the right to serve process "in any other manner now or hereafter permitted by law." We are of opinion that, a foreign corporation being present in the District, its agent duly authority to do the tasks for which it is present here may be served with process in its behalf in an action reasonably within the ambit of those tasks.[10]

We intend this ruling to be no broader than the case. We hold that, if a foreign corporation comes into the District of Columbia for the purpose of filing and prose-

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[8] D.C. CODE § 29-933i(a) (1961 ed.).

[9] *Id.*, § 29-933i(c).

[10] See the discussions by the Supreme Court in Hanson v. Denckla, 357 U.S. 235 (1958); McGee v. International Life Ins. Co., 355 U.S. 220 (1957); Perkins v. Benguet Mining Co., 342 U.S. 437 (1952); International Shoe Co. v. Washington, 326 U.S. 310 (1945).

cuting in the District Court a suit concerning certain property, it cannot, by restricting the authority of its resident agent, immunize itself against suit in that same court involving that same property.

It is suggested that since, as appears in a moment, we affirm the dismissal of the complaint, the dispute concerning the service of process is moot and ought not to be decided. But on the other hand, if Interhandel was not susceptible to process in the District, the nature of the complaint, valid *vel non*, was immaterial. Thus we think decision upon the service-of-process point is an integral first step in the resolution of the controversy. Had we decided Interhandel was not subject to suit, there would have been an end to the matter. But, since we hold Interhandel to have been subject to suit and correctly served, we pass on to the problem of the dismissal of the complaint.

III

Did the court err in dismissing the action against the Government officers? We think it did not.

Pending in the court here was a civil action by Interhandel against the Attorney General concerning properties vested in him by virtue of a federal statute. The President, by a memorandum dated January 8, 1963, and under authority vested in him by statute,[11] determined that the interest of the United States required the sale of this property. The Attorney General had power to settle the litigation.[12] He settled it. One of the terms

[11] Pub. L. No. 87-846, § 203, 76 STAT. 1113 (1962).

[12] Halbach v. Bumsted, 207 F. 2d 503 (3d Cir. 1953), *cert. denied sub nom.* Bumsted v. Markham, 347 U.S. 933 (1954); Standard Oil Co. v. Clark, 163 F. 2d 917 (2d Cir. 1947), *cert. denied*, 333 U.S. 873 (1948); Castell v. United States, 98 F. 2d 88 (2d Cir.), *cert denied*, 305 U.S. 652 (1938).

of the stipulation of settlement was that the funds would be held by the United States as security for the performance by Interhandel of certain indemnity obligations imposed upon it by the agreement. (Sec. VIII(4).) Those obligations (Sec. IX(2)) were that Interhandel would hold harmless the United States and its officers and employees from any claim made relating to actions described in certain paragraphs of the stipulation, or resulting from compliance by any officer of the United States with the stipulation, and from any claim made relating to the control or operation of the General Aniline and Film Corporation by Interhandel, or any of its stockholders, or persons under its control, or successors to such persons. Further, Interhandel agreed (Sec. IX(2)) to indemnify the United States and its officers and employees from any claims brought by the Government of the Netherlands on behalf of itself or its political subdivisions, Interhandel or persons under its control, or any Dutch national person, in respect to the properties subject to the stipulation. The stipulation provided that the United States could recover sums due by reason of the indemnities either by payment or by cancellation of the securities in which the properties were invested. And it provided (Sec. VIII(4)) that redemptions of these properties for Interhandel could be made from time to time as the Attorney General determines that such securities are no longer needed to secure the performance by Interhandel of its indemnity obligations. Thus it is amply clear that the United States has an interest in these securities and that its officers are performing official duties involving judgment and discretion, not mere ministerial chores. The action was to require these officers to turn over to plaintiffs these securities and also to prevent them from carrying out the obligations of the stipulation of settlement. Thus the action is against the United States, which has not consented to it. It was correctly dismissed.

Plaintiffs cite and rely upon *Mellon* v. *Orinoco Iron Co.*[13] and *Houston* v. *Ormes.*[14] None of the criteria listed in those cases as premises for exceptions to the general rule respecting unconsented-to suits against the United States are present in the case at bar.[15]

Moreover, (although the point is immaterial in view of the foregoing) plaintiffs specifically and expressly asserted to the trial court that they claim no equitable lien upon the funds being held in the Interhandel account. Thus they are in a position of persons merely interested in the common good and, under the doctrine of *Massachusetts* v. *Mellon,*[16] have no standing to sue.

IV

Did the court err when it dismissed the complaint? We think it did not.

The thesis of the action is easily recognized from the outline we have given of the complaint. Interhandel is a creature of Farben. Farben was a part of the Nazi conspiracy of 1933-45. The Nazi conspiracy, in violation of the laws of the several states involved and of natural law, damaged these two plaintiffs and others, to a number of some two hundred thousand, destroying their property, killing their relatives, and reducing them to slave labor. Therefore all the property of Interhandel should be awarded by American courts to these plaintiffs, pro rata. We are of opinion the thesis is not presently susceptible of judicial implementation. It may be that the Congress might enact a program and a procedure by which the objectives prayed

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[13] 266 U.S. 113 (1924).

[14] 252 U.S. 469 (1920).

[15] And see Smith v. Harrah, 60 App. D.C. 258, 51 F. 2d 314 (1931), and McCormack v. Harrah (a companion case), 60 App. D.C. 260, 51 F. 2d 316 (1931).

[16] 262 U.S. 447 (1923).

for could be achieved. But we think the courts alone cannot do it. As presently framed, the problem is not within the established scope of judicial authority. It did not arise under the Constitution or laws of the United States, or within the territorial jurisdiction of the courts of the United States. The premises for these conclusions are many and easily seen. The span between the doing of the damage and the application of the claimed assuagement is too vague. The time is too long. The identity of the alleged tort feasors is too indefinite. The procedure sought—adjudication of some two hundred thousand claims for multifarious damages inflicted twenty to thirty years ago in a European area by a government then in power—is too complicated, too costly, to justify undertaking by a court without legislative provision of the means wherewith to proceed.

The complaint prays, as we have noted, that all the Interhandel funds be divided "pro rata and equitably" among the participating petitioners. If only the present two participate, they would receive sixty million dollars apiece. If the entire potential two hundred thousand damaged persons entered the proceeding, each would receive six hundred dollars. This method of award would be a novelty to us. The events, the witnesses, the guilty tort feasors, their membership in the conspiracy are all so potentially vague at this point as to pose an insoluble problem if undertaken by the courts without legislative or executive guidance, authorization or support. The whole concept is too uncertain of legal validity to sustain the self-establishment of the proceedings by a court in the absence of specific legislative or executive formulation. It seems to us that the trial court correctly dismissed the action for failure to state a claim upon which relief can be granted.

Affirmed.